IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No. 2949-C of 2006 and
R.S.A. No. 1198 of 2006

Date of Decision 7.9.2006

Krishan Nanda **...appellant**

Versus

Jaswant Singh **...respondent**

Coram: Hon'ble Mr. Justice Ajay Kumar Mittal

Present: Mr. Ranbir Partap Bali, Advocate
for the appellant.

AJAY KUMAR MITTAL, J. (Oral)

C.M. No.2949-C of 2006

This is an application for condonation of delay in refiling the appeal.

It has been averred in the application that the appeal was returned by the office on 21-07-2001 to settle objections and the papers of the appeal were lost in the office of the lawyer and on account of extensive repairs going on in the house, the same could not be traced and it was traced out in the last week of December, 2005. He further stated that, thereafter, the appeal was refiled. In the process, delay has occurred in refiling the appeal. The counsel for the appellant has filed an affidavit in support of assertions made in the application. There is no reason to doubt the affidavit filed by the counsel for the appellant.

In view of the facts and circumstances of this case, delay in refiling the appeal is condoned.

C. M. stands disposed of accordingly.

R.S.A. No. 1198 of 2006

The plaintiff filed the suit for possession claiming himself to be owner of residential house of portion marked as ABCDEFGH on the

ground floor and marked as PQRS on the first floor as shown in the site plan Ex.PW 8/1 situated behind Mai Ka Mandir, Geeta Bhawan Road, Nai Abadi, Gurdaspur.

The plaintiff claimed that the property in dispute was rented out to the defendant at a monthly rent of Rs. 300/- and application for ejectment of the defendant had been filed by the plaintiff in the Court of Rent Controller, Gurdaspur on 8.1.1990, in which the defendant had denied the relationship of landlord and tenant qua the property in dispute and had also denied the title of the plaintiff i.e. on 12.3.90 and therefore the possession of the defendant became illegal and unauthorised from that date. The plaintiff further pleaded that the defendant is the owner of the house adjoining towards eastern side of the plaintiff's house which he rented out to one Rattan Singh retired D.S.P., who illegally demolished the wall 'BC' of the house of the plaintiff and tried to encroach upon and include the disputed portion of the house of the plaintiff with his house. The plaintiff further alleged that he is residing in a portion of the house situated towards western side of the portion of the house in dispute with his family which was purchased by him on 13.7.1972 and the defendant has no right or title in the disputed house. Upon notice of the suit, the defendant put in appearance and filed written statement wherein he denied that the plaintiff is the owner of the house in dispute and also denied that the plaintiff ever let out the disputed property to the defendant. The defendant further submitted that the ejectment application, which was filed by the plaintiff in the Court of Rent Controller, Gurdaspur had been withdrawn by him.

The trial Court framed the following issues:-

"1) Whether the suit is bad for non-joinder of necessary party? OPD

2) Whether the suit is within time? OPP

3) Whether plaintiff is owner of the house in question and he is entitled to a decree for possession of the same? OPP

4) Relief."

The trial court while deciding issue No.3, on appreciation of oral as well as documentary evidence came to the conclusion that the house is in the name of the defendant and the meter was in the name of the defendant and he was in possession of the same since 1975. Thus, the plaintiff had miserably failed to prove that the property as described in the head note of the plaint is the part of the plot which was purchased by him. It was further held that the defendant was in possession of the disputed premises as owner. Accordingly, the suit filed by the plaintiff was dismissed. On appeal, the findings recorded by the trial Court were affirmed and appeal filed by the plaintiff was dismissed.

Learned counsel for the appellant could not point out any mis-reading or mis-appreciation of evidence to show that the concurrent findings of fact regarding ownership recorded by the courts below are perverse in any manner which may warrant interference by this court in the Regular Second Appeal. No question of law much less a substantial question of law arises in this appeal.

Finding no merit in this appeal, the same is dismissed.

(Ajay Kumar Mittal)
Judge

September 7, 2006
pj